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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Further Forbearance from Title)
II Regulation for Certain Types)
of Commercial Mobile Radio)
Service Providers)

GN Docket No. 94-33

RECEIVED

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REPLY COMMENTS OF SPRINT CORPORATION
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies, Sprint Communications Company L.P., and Sprint Cellular, respectfully replies to Comments filed in response to the May 4, 1994 NPRM.¹ In the NPRM, the Commission sought comment on whether further forbearance from the remaining sections of Title II is justified for CMRS providers.²

The genesis of this docket is the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), which amended the Communications Act to ensure regulatory parity among mobile radio services providers. As set forth in the NPRM, 47 U.S.C. Section 332(c)1(A), as amended by the Budget Act, permits the Commission to forbear from applying specific provisions of Title II to CMRS

1. In the Matter of Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94-33 Notice of Proposed Rule Making, FCC 94-101, released May 4, 1994 ("NPRM").

2. 47 U.S.C. Sections 210, 213, 215, 218-20, 223, and 225-28 are being considered for forbearance in this docket.

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providers if a three-pronged test is met. The NPRM correctly noted that the legislation allows the Commission to distinguish among types of CMRS providers when making forbearance decisions.³ The Commission opines that size may be a valid criterion upon which to base such decisions.⁴

Several commenters agreed that size should be the determining factor for forbearance. For instance, the Utilities Telecommunications Council stated that size was an appropriate factor, provided the focus was on the size of the entity holding the CMRS license and not of the parent or an affiliated company.⁵ Both E.F. Johnson Company and The National Association of Business and Education Radio, Inc. also supported size as the determining factor, the former stating that size should be measured by the number of channels⁶ and the latter stating that the Commission should consider the amount of spectrum licensed to a provider and whether the provider is a former private carrier.⁷

3. NPRM at par. 4.

4. Id. at par. 6.

5. Comments of the Utilities Telecommunications Council at pp. 3-4.

6. Comments of the E.F. Johnson Company at pp. 6-7.

7. Comments of National Association of Business and Educational Radio, Inc. at pp. 10-12.

The use of size alone, without any consideration of the presence or absence of market power, for the application of selective forbearance among CMRS providers is inappropriate.

As BellSouth stated:

Although the legislative history behind the enactment of Section 332 indicates that "differential regulation of commercial mobile services is permissible" in determining whether to forbear from applying specific provisions of Title II, Congress also directed that such regulation "is not required in order to fulfill the intent of [Section 332]. Thus, disparate regulation can exist only if there is a basis for such regulation."⁸

Size alone does not provide this basis. If, for example, one CMRS provider has become much larger than another provider that entered the market at the same time, because of superior service, lower prices or better business acumen, there is no rational reason why it should necessarily be subject to a more restrictive regulatory regime. In addition, as Bell Atlantic Mobile Systems, Inc. pointed out, "The Commission's forbearance authority does not provide support for a size-based forbearance standard."⁹ The use of size in the application of forbearance runs afoul of Congressional intent in the Budget Act -- to ensure regulatory parity among providers of similar mobile radio services. As a result of selective forbearance because of size,

8. Comments of BellSouth at p. 4.

9. Comments of Bell Atlantic Mobile Systems, Inc. ("Bell Atlantic") at p. 1. The Legislative History allows for differential forbearance treatment based on market conditions; size is not a consideration. See, H.R. Conf. Rep. 103-213, 103rd Cong., 1st Sess. 1993, 1993 WL 302291 (Leg.Hist.) at p. 1092 of 2260.

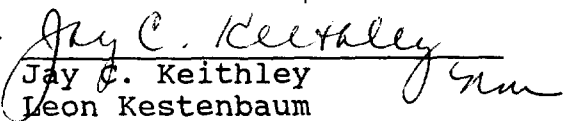
Bell Atlantic further states,

One provider in the marketplace might then be subject to higher regulatory burdens than another simply because it was larger or served a particular customer base. This would skew the marketplace in favor of certain providers for no rational reason.¹⁰

Accordingly, if the Commission exercises its further forbearance authority it should do so on behalf of all CMRS providers; such uniform forbearance will further the goals of regulatory parity and a competitive mobile radio services market.

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July 12, 1994

10. Id. at p. 4.

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 12th day of July, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of Sprint Corporation" in the Matter of Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94-33 filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.


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